IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 132 of 2007
With
COMPANY PETITION No. 135 of 2007
With
COMPANY PETITION No. 136 of 2007
With
COMPANY PETITION No. 137 of 2007
With
COMPANY PETITION No. 139 of 2007
With
COMPANY PETITION No. 140 of 2007
With
COMPANY PETITION No. 141 of 2007
With
COMPANY PETITION No. 142 of 2007
With
COMPANY PETITION No. 143 of 2007
With
COMPANY PETITION No. 133 of 2007
With
COMPANY PETITION No. 134 of 2007
With
COMPANY PETITION No. 138 of 2007
With
COMPANY PETITION No. 144 of 2007
With
COMPANY PETITION No. 145 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ALFA BRISTLERS PRIVATE LIMITED - Petitioner(s)

Versus
. - Respondent(s)

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Appearance :
MRS SWATI SOPARKAR for Petitioner(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 27/08/2007

COMMON ORAL JUDGMENT

1. The present petitions are for sanctioning the scheme of amalgamation, copy whereof is produced at Annexure C to the petition. The Company Petition No. 145 of 2007 is a transferee Company whereas the Company Petition No. 132 of 2007, Company Petition No. 135 of 2007, Company Petition No. 136 of 2007, Company Petition No. 137 of 2007, Company Petition No. 139 of 2007, Company Petition No. 140 of 2007, Company Petition No. 141 of 2007, Company Petition No. 142 of 2007, Company Petition No. 143 of 2007, Company Petition No. 133 of 2007, Company Petition No. 134 of 2007, Company Petition No. 138 of 2007 and Company Petition No. 144 of 2007 are the transferor Companies.

2. In Company Petition No. 132 of 2007 pursuant to

the order dated 27.04.2007 passed by this Court (Coram: M.R. Shah, J.) in Company Application No. 199 of 2007 holding of the meeting of the equity shareholders was dispensed with and the declaration of the company was recorded that there are no secured or unsecured creditors.

3. In Company Petition No. 135 of 2007 pursuant to the order dated 27.04.2007 passed by this Court (Coram: M.R. Shah, J.) in Company Application No. 202 of 2007 the meeting of the equity shareholders and all the unsecured creditors were dispensed with and the declaration of the company was recorded that there are no secured creditors of the Company.

4. In Company Petition No. 136 of 2007 pursuant to the order dated 27.04.2007 passed by this Court (Coram: M.R. Shah, J.) in Company Application No. 203 of 2007 the meeting of the equity shareholders and all the unsecured creditors were dispensed with and the declaration was recorded of the concerned company that there is no secured creditors of the Company.

5. In Company Petition No. 137 of 2007 pursuant to

the order dated 27.04.2007 passed by this Court (Coram: M.R. Shah, J.) in Company Application No. 204 of 2007 the meeting of the equity shareholders and all the unsecured creditors were dispensed with and the declaration was recorded of the concerned company that there is no secured creditors of the Company.

6. In Company Petition No. 139 of 2007 pursuant to the order dated 27.04.2007 passed by this Court (Coram: M.R. Shah, J.) in Company Application No. 206 of 2007 the meeting of the equity shareholders and all the unsecured creditors were dispensed with and the declaration was recorded of the concerned company that there is no secured creditors of the Company.

7. In Company Petition No. 140 of 2007 pursuant to the order dated 27.04.2007 passed by this Court (Coram: M.R. Shah, J.) in Company Application No. 207 of 2007 the meeting of the equity shareholders and all the unsecured creditors were dispensed with and the declaration was recorded of the concerned company that there is no secured creditors of the Company.

8. In Company Petition No. 141 of 2007 pursuant to the order dated 27.04.2007 passed by this Court (Coram: M.R. Shah, J.) in Company Application No. 209 of 2007 the meeting of the equity shareholders and all the unsecured creditors were dispensed with and the declaration was recorded of the concerned company that there is no secured creditors of the Company.

9. In Company Petition No. 142 of 2007 pursuant to the order dated 27.04.2007 passed by this Court (Coram: M.R. Shah, J.) in Company Application No. 210 of 2007 the meeting of the equity shareholders and all the unsecured creditors were dispensed with and the declaration was recorded of the concerned company that there is no secured creditors of the Company.

10. In Company Petition No. 143 of 2007 pursuant to the order dated 27.04.2007 passed by this Court (Coram: M.R. Shah, J.) in Company Application No. 211 of 2007 the meeting of the equity shareholders and all the unsecured creditors were dispensed with and the declaration was recorded of the concerned company that there is

no secured creditors of the Company.

11. In Company Petition No. 133 of 2007 pursuant to the order dated 27.04.2007 passed by this Court (Coram: M.R. Shah, J.) in Company Application No. 200 of 2007 the meeting of the equity shareholder was dispensed with, however, meeting of the secured and unsecured creditors were ordered to be held on 2nd June 2007 after issuing public advertisement and the Chairman was ordered to file the report. Pursuant thereto Mr. Amit V Voradiya the Chairman appointed for such purpose has filed affidavit dated 7th June 2007 together with the proceedings of the meeting showing that the scheme of amalgamation is approved by 100 percent in number and in value of the secured and unsecured creditors present at the meeting.

12. In Company Petition No. 134 of 2007 pursuant to the order dated 27.04.2007 passed by this Court (Coram: M.R. Shah, J.) in Company Application No. 201 of 2007 the meeting of the equity shareholder was dispensed with, however, meeting of the secured and unsecured creditors were

ordered to be held on 2nd June 2007 after issuing public advertisement and the Chairman was ordered to file the report. Pursuant thereto Mr. Amit V Voradiya the Chairman appointed for such purpose has filed affidavit dated 7th June 2007 together with the proceedings of the meeting showing that the scheme of amalgamation is approved by 100 percent in number and in value of the secured and unsecured creditors present at the meeting.

13. In Company Petition No. 138 of 2007 pursuant to the order dated 27.04.2007 read with the order dated 04.05.2007 passed by this Court (Coram: M.R. Shah, J.) in Company Application No. 205 of 2007 the meeting of the equity shareholder was dispensed with, however, meeting of the secured and unsecured creditors were ordered to be held on 2nd June 2007 after issuing public advertisement and the Chairman was ordered to file the report. Pursuant thereto Mr. Amit V Voradiya the Chairman appointed for such purpose has filed affidavit dated 7th June 2007 together with the proceedings of the meeting showing that

the scheme of amalgamation is approved by 100 percent in number and in value of the secured and unsecured creditors present at the meeting.

14. In Company Petition No. 144 of 2007 pursuant to the order dated 27.04.2007 read with the order dated 04.05.2007 passed by this Court (Coram: M.R. Shah, J.) in Company Application No. 212 of 2007 the meeting of the equity shareholder was dispensed with, however, meeting of the secured and unsecured creditors were ordered to be held on 2nd June 2007 after issuing public advertisement and the Chairman was ordered to file the report. Pursuant thereto Mr. Amit V Voradiya the Chairman appointed for such purpose has filed affidavit dated 7th June 2007 together with the proceedings of the meeting showing that the scheme of amalgamation is approved by 100 percent in number and in value of the secured and unsecured creditors present at the meeting.

15. In Company Petition No. 145 of 2007 pursuant to the order dated 27.04.2007 passed by this Court (Coram: M.R. Shah, J.) in Company Application No. 200 of 2007 the meeting of the equity

shareholders and unsecured creditors of the company were dispensed with and the declaration was recorded that there are no secured creditors of the company.

16. All the petitions came to be admitted on 27.06.2007 and it was ordered to advertise in two daily news papers i.e. Indian Express, English Daily and Jansatta-Loksatta, Gujarati Daily both in Vadodara editions. Publications in the Government Gazette were dispensed with. The notices were issued to the Central Government through Regional Director Department of Corporate Affairs at Mumbai, and in case of all the transferor companies notices were also issued to the Official Liquidator for examination, through the Chartered Accountant, in to the affairs of the company.

17. It may be recorded that for the advertisement common publication was permitted for all the companies which were in the group of the transferor companies.

18. The affidavit is filed by Dharmendra M Rathod, clerk of learned Counsel Ms. Swati Soparkar

dated 20.04.2007 together with the copy of the paper published pursuant to the order passed by this Court. As per the affidavit dated 30.07.2007 filed by Shri Indravadan M Shah, Director and Authorised Signatory of the petitioner company no objections are received by the concerned petitioner or learned Counsel in response to the advertisement of holding the scheme of arrangement or otherwise.

19. In Company Petition No. 132 of 2007 the official liquidator has filed the report dated 26.07.2007 with the report of the Shah Mehta & Bakshi Chartered Accountant and has stated in the report that the affairs of the transferor Company have not been conducted in a manner prejudicial to the interest of the members or public interest.

20. In Company Petition No. 135 of 2007 the official liquidator has filed the report dated 26.07.2007 with the report of the Shah Mehta & Bakshi Chartered Accountant and has stated in the report that the affairs of the transferor Company have not been conducted in a manner

prejudicial to the interest of the members or public interest.

21. In Company Petition No. 136 of 2007 the official liquidator has filed the report dated 26.07.2007 with the report of the JLN US & Company Chartered Accountant and has stated in the report that the affairs of the transferor Company have not been conducted in a manner prejudicial to the interest of the members or public interest.

22. In Company Petition No. 137 of 2007 the official liquidator has filed the report dated 26.07.2007 with the report of the JLN US & Company Chartered Accountant and has stated in the report that the affairs of the transferor Company have not been conducted in a manner prejudicial to the interest of the members or public interest.

23. In Company Petition No. 139 of 2007 the official liquidator has filed the report dated 26.07.2007 with the report of the Shah Mehta & Bakshi Chartered Accountant and has stated in the report that the affairs of the transferor

Company have not been conducted in a manner prejudicial to the interest of the members or public interest.

24. In Company Petition No. 140 of 2007 the official liquidator has filed the report dated 26.07.2007 with the report of the Shah Mehta & Bakshi Chartered Accountant and has stated in the report that the affairs of the transferor Company have not been conducted in a manner prejudicial to the interest of the members or public interest.

25. In Company Petition No. 141 of 2007 the official liquidator has filed the report dated 26.07.2007 with the report of the JLN US & Company Chartered Accountant and has stated in the report that the affairs of the transferor Company have not been conducted in a manner prejudicial to the interest of the members or public interest.

26. In Company Petition No. 142 of 2007 the official liquidator has filed the report dated 26.07.2007 with the report of the Shah Mehta & Bakshi Chartered Accountant and has stated in the

report that the affairs of the transferor Company have not been conducted in a manner prejudicial to the interest of the members or public interest.

27. In Company Petition No. 143 of 2007 the official liquidator has filed the report dated 26.07.2007 with the report of the JLN US & Company Chartered Accountant and has stated in the report that the affairs of the transferor Company have not been conducted in a manner prejudicial to the interest of the members or public interest.

28. In Company Petition No. 133 of 2007 the official liquidator has filed the report dated 26.07.2007 with the report of the JLN US & Company Chartered Accountant and has stated in the report that the affairs of the transferor Company have not been conducted in a manner prejudicial to the interest of the members or public interest.

29. In Company Petition No. 134 of 2007 the official liquidator has filed the report dated 26.07.2007 with the report of the JLN US & Company

Chartered Accountant and has stated in the report that the affairs of the transferor Company have not been conducted in a manner prejudicial to the interest of the members or public interest.

30. In Company Petition No. 138 of 2007 the official liquidator has filed the report dated 26.07.2007 with the report of the Shah Mehta & Bakshi Chartered Accountant and has stated in the report that the affairs of the transferor Company have not been conducted in a manner prejudicial to the interest of the members or public interest.

31. In Company Petition No. 144 of 2007 the official liquidator has filed the report dated 26.07.2007 with the report of the Shah Mehta & Bakshi Chartered Accountant and has stated in the report that the affairs of the transferor Company have not been conducted in a manner prejudicial to the interest of the members or public interest.

32. In response to the notice issued to the Central Government Mr. V.K. Khubchandani, Registrar of

Companies has filed affidavit raising objections based on the communication received by the him vide letter dated 23.07.2007 from the Regional Director, Corporate Affairs.

33. The first objection relating to the non utilization of the authorised capital of all the transferor companies by the transferee company. It may be recorded that similar objection came to be considered by this Court in its order dated 25-27.06.2007 passed in Company Petition Nos. 41 to 43 of 2007 in the matter of Shubhlaxmi Dyetex Pvt. Ltd., and others, and this Court observed as under:

> “The first objection pertains to the desire of the Transferee/resulting Company to utilise the authorised capital of the Transferor Company and the insistence is made to increase the authorised capital as per the provisions of Sections 94 and 97 read with Schedule 10 of the Companies Act, 1956.
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> 8. I have heard Mr.Pahwa, learned Counsel appearing for all the Companies as well as Mr.Harin P. Raval, learned Assistant Solicitor General of India on the point raised by the Central Government as indicated hereinabove. As such, in view of

the decision of this Court (Coram: K.J.Puj, J.) in Company Petition No.41 of 2005, similar objections by the Central Government in view of the reasons recorded by this Court at para 16 in the said decision, came to be rejected mainly on the ground that it is a one-window system and once the scheme is sanctioned no such stamp duty or registration charges are required to be paid on increase of the share capital of the Company on amalgamation or merger.

9. Mr.Raval, learned Assistant Solicator General, did point out that the appeal is preferred against the decision of this Court in Company Petition No.41 of 2005, however, he fairly conceded that no orders are passed, staying operation or implementation of the judgement of the Single Bench of this Court. Therefore, as such, the objections raised on behalf of ROC cannot be maintained.

10. However, the only aspect, which did not come for consideration in the aforesaid decision and which may be required to be considered is the bonafide of the scheme. If, as a result of the amalgamation, the authorised capital is increased, the Central Government might raise the contention of additional stamp duty, but there may not be a double recovery of the stamp duty already paid. At the same time, if upon the

amalgamation of the Companies and having been sanctioned by this Court, the consequent result is to increase the authorised share capital of the Companies, the Tranferee Company cannot take any undue benefit to the extent that the authorised capital sanctioned if increased, the stamp duty which was otherwise payable would not be paid, though required under the law. As such, in such matters, even if reasonable view deserves to be taken to the extent of the stamp duty already paid by the transferee Company as well as the Transferor Company, whose share capital is merged into the capital of the Transferee Company.

11. The attempt on the part of the learned Assistant Solicitor General, Mr.Raval to contend that if there is any statutory provision requiring the payment of stamp duty, may be for second time, cannot be allowed to go away, merely because by agreement, the two companies have resolved to amalgamate, cannot be accepted for the simple reason that as such, by statutory fiction once the sanction is granted by this Court, not only the inter se rights get affected, but the companies stand amalgamated, resulting into of lawful consequence as it may accrue by statutory fiction. As observed earlier, neither Transferee Company can be allowed to take

any undue benefits under the guise of the Scheme of amalgamation, nor the contention of the Central Government can be accepted for recovery of double stamp duty, which is otherwise not warranted, nor would meet with the test of reasonableness, even if the objections are tested on sound principles of equity and good conscience."

34. Similar will be the situation and the direction in the present cases also.

35. The second objection pertains to furnishing all the latest financial position of the company. It appears that the financial position of the company as on 31.03.2007 is already produced together with the subsequent affidavit filed in the proceedings of the concerned terms and therefore such objection would not survive.

36. The third objection pertains to change of the name of compliance to the provision of section 21 of the Companies Act. In this regard it is deserves to be recorded that the similar aspect also came to be considered by this Court in its order dated 03.08.2007 passed in Company Petition Nos. 30 to 33 of 2007 in the matter of Norfolk Infotech Pvt. Ltd., and others and this

Court has observed as under:

“10. Concerning to the second objection raised on behalf of the Central Government for compliance to the provisions of Section 21 of the Companies Act, since a change in the name is to result into as a consequence of the scheme, if ultimately sanctioned, it appears that the said aspect is also covered by the decision of this Court in the case of Search Chem Industries Ltd. reported at (2006) 129 Comp Case 471(Guj), wherein this Court by relying upon the other decision of the Bombay High Court and also of this Court, observed as under:

> “8. Notice of the petitions has been served upon the Central Government and Ms. P.J.Davawala, Additional Standing Counsel appearing for the Central Government. Ms. Davawala has informed the court and put on record the letter from the Registrar of Companies of Gujarat dated 21.8.2003 along with the letters of the Regional Director dated 3.7.2003 and 13.8.2003 indicating that the Central Government has made three observations. These observations are with regard to the clauses of the scheme pertaining to the change in the name of the companies, Change in the Object Clause of the Transferee Company and the pending prosecution against the De-merged company.
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> 9. I have heard Ms. Swati Saurabh Soparkar, learned advocate for the petitioner companies on these issues. It is submitted by her that the observations pertaining to the clauses of the scheme, it is an accepted position that the scheme under section 391 and 394 is a complete code in itself and considering the principle of "Single Window Clearance" it is not necessary for the petitioner company to get separate clearances prescribed under the Companies Act, 1956, The said submission is substantiated by the decision of the Bombay High Court in the matter of PMP Auto Industries Limited (80 Co.Cases 819) as also in the case of Rangkala Investments Limited (89 Com.Cases 774). With regards to the pending prosecution against the de-merged company, it is submitted that since the De-merged company is going to subsist even after the sanction of the scheme and the Scheme nowhere proposes to affect the same, the pending proceedings may continue in

accordance with law.

> 10. Considering the above submissions and having gone through the petitions, I am satisfied that the observations made by the Central Government are misconceived. As held by this Court in the case of Rangkala Investments Limited (supra) and Manekchowk Mills Limited (supra) as also the Bombay High Court in the case of PMP Auto Ltd.(supra), the Scheme proceedings under section 391-394 give "single window clearance" and there is no reason to insist for a separate formality to be followed for change in the name or the Object clause of the Memorandum of Association of the Resulting Company. However, the petitioner companies are directed to file necessary forms as prescribed under law in the office of the Registrar of Companies to place on record these changes. As to the 3rd objections, in view of the fact that the De-merged company continues to subsist, the pending proceedings would obviously continue in accordance with law."

11. Therefore, it appears that in view of the aforesaid position of law, the objections raised on behalf of the Central Government would not come in the way of sanctioning the Scheme of Amalgamation."

37. Hence, such objection cannot be maintained.

38. No other adverse circumstances are brought to the notice of this Court.

39. Hence, subject to the aforesaid observations and directions for utilization of the authorised capital of the transferor companies by the transferee company as per the scheme of amalgamation and the payment of the additional stamp duty minus stamp duty already paid by transferor companies, the scheme of amalgamation

is sanctioned as per the provisions of the Companies Act.

40. All the petitions are allowed to the aforesaid extent.

41. The fees of the Assistant Solicitor General is quantified at **Rs. 2500/-** in each petition and it would be open to the concerned company or transferee company to pay the fees to the learned counsel by A/C payee cheque directly.

(JAYANT PATEL,J.)

Suresh*